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SENATE BILL 2968

By Haun

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 43, relative to the creation of the Youth Smoking Prevention Fund and the establishment of an advisory commission and grants thereunder.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, is amended by adding Sections 2 through 9 of this act as a new chapter thereto.

SECTION 2. This chapter shall be known and may be cited as the "Youth Smoking Prevention Fund Act of 2000".

SECTION 3. As used in this chapter, unless the context otherwise requires:

(1) "Fund" means the youth smoking prevention fund established pursuant to the provisions of this act.

(2) "Master settlement agreement" means the tobacco litigation settlement agreement entered into by Tennessee and certain other states, United States territories and possessions, and participating tobacco manufacturers, dated November 23, 1998.

(3) "Commission" means the youth smoking prevention advisory commission established pursuant to the provisions of this act to develop a state plan for youth smoking prevention and to make recommendations for the award of grants from the fund

for the purpose of reducing the consumption of cigarettes by minors. The commission shall be a part of the department of agriculture for administrative purposes.

(4) "State plan" means the plan for youth smoking prevention adopted pursuant to the provisions of this act.

(5) "Grantee" means any public entity or any private nonprofit entity to which the department of agriculture, after recommendation by the youth smoking prevention advisory commission, has awarded monies from the fund for qualified youth smoking prevention programs.

(6) "Qualified youth smoking prevention program" means a program that meets the criteria set forth in the state plan for youth smoking prevention.

SECTION 4. (a) There is established in the department of agriculture a youth smoking prevention fund. The fund shall consist of a portion of all monies received by the state under the master settlement agreement, and all other monies, including gifts, grants or other funds, designated for the fund. All interest derived from the deposit and investment of monies in the fund shall be credited to the fund

(b) The fund shall be administered by the department of agriculture pursuant to the provisions of this act.

(c) All monies in the fund shall be subject to annual appropriations by the general assembly for the express purposes authorized pursuant to the provisions of this act and shall be available for the award of grants for qualified youth smoking prevention programs and related administrative costs of the youth smoking prevention advisory commission established pursuant to the provisions of this act.

(d) Monies from the fund shall not be used to engage in any political activities or lobbying, including, but not limited to, support of or opposition to candidates, ballot initiatives, referenda or other similar activities.

SECTION 5. (a) There is established a youth smoking prevention advisory commission within the department of agriculture, which shall adopt a state plan for youth smoking prevention and make recommendations for the award of grants from the fund for qualified youth smoking prevention programs.

(b) The commission shall consist of seven (7) voting members, of which two (2) shall be appointed by the speaker of the senate, two (2) shall be appointed by the speaker of the house of representatives, two (2) shall be appointed by the governor, and one (1) shall be appointed by the commissioner of the department of agriculture. The commissioner of the department of agriculture, the commissioner of the department of education and the commissioner of the department of health shall be ex officio members of the commission. Two (2) of the members of the commission shall be minors between the ages of twelve (12) and eighteen (18). Members of the commission shall be residents of this state and shall be selected for their knowledge, competence, experience or interest in youth smoking prevention, or other relevant background, including, but not limited to, youth education, public health, social science and business expertise. Of the original appointees, one (1) appointee of the speaker of the senate, one (1) appointee of the speaker of the house of representatives and one (1) appointee of the governor shall serve a term of two (2) years. The remaining appointees shall serve a term of four (4) years. Subsequent appointees shall each serve for a term of four (4) years or until their successors are appointed and approved. Any vacancy shall be filled in the same manner as the original appointment for the remainder of the term.

(c) The commission shall be convened by the governor for its first meeting no later than October 1, 2000. A chairperson and vice-chairperson of the commission shall be elected by a majority vote of its voting members and shall serve at the pleasure of the majority of the voting members of the commission. Meetings of the commission shall be at the call of the chairperson. The chairperson, or in the chairperson's absence, the

vice-chairperson, shall preside over meetings of the commission. After the first full year of operation of the commission, the commission shall not meet more than six (6) times per year.

(d) The Commission shall have an executive director, who shall be appointed by the governor and approved by a majority vote of the voting members of the commission. The salary of the executive director and travel and per diem expenses of the commission members when attending commission meetings shall be paid for from the fund. From time to time as necessary to support its activities, the commission may request from the commissioner of the department of agriculture the temporary assignment of not more than three (3) staff and support personnel who are full-time employees of the department. No portion of the salaries of such employees shall be reimbursable from the fund.

SECTION 6. (a) On or before March 31, 2001, the commission shall propose a state plan for youth smoking prevention. On or before March 31 of each subsequent year, the commission may propose amendments to the plan. The commission shall submit its proposed state plan or any proposed amendments thereto to the governor, the speaker of the senate and the speaker of the house of representatives. The governor, the speaker of the senate and the speaker of the house of representatives may submit comments to the commission on the state plan on or before June 1, 2001, and may submit comments to the commission on its proposed amendments to the state plan on or before June 1 of each subsequent year. On or before October 1, 2001, the commission shall adopt a final state plan and shall make such plan public. On or before October 1 of each subsequent year, the commission shall adopt any amendments to the state plan and shall make such amended state plan public.

(b) The state plan shall set out the criteria by which grant proposals are considered by the commission. Such plan shall also describe the types of youth

smoking prevention programs that shall be eligible for consideration for grants from the fund. Such eligible programs shall include, but not be limited to:

(1) Media campaigns directed to youth to prevent underage consumption of cigarettes;

(2) School-based education programs to prevent youth smoking;

(3) Community-based youth programs involving youth smoking prevention through general youth development; and

(4) Enforcement and administration of §§ 39-15-407, 39-15-408, 39-15-409, 39-15-410, 39-15-411, 39-15-412, 39-15-413, and title 39, chapter 17, part 15, as well as related retailer education and compliance efforts.

(c) The state plan shall provide that no less than fifty percent (50%) of the dollar value of the grants be awarded in each year to programs described in subsections (b)(2) and (b)(3).

(d) The state plan shall provide for a grant for an annual statewide school-based survey to measure cigarette use and behaviors towards cigarette use by individuals in grades six through twelve (6-12). Such survey shall:

(1) Involve a statistically valid sample of the individuals in each grade, six through twelve (6-12);

(2) Not include any individual who is eighteen (18) years of age or older; and

(3) Be made available to the public, along with the resulting data, excluding respondent identities and respondent-identifiable data, prior to October 1 of each year.

(e) The state plan shall provide that no more than five percent (5%) of the fund shall be expended on the administrative costs of the commission.

SECTION 7. (a) The commission shall meet at least four (4) times a year to review applications for grants for youth smoking prevention programs. On or before March 1 of each year, beginning in 2002, the commission shall make final recommendations to the department of agriculture for the award of grants to qualified applicants for the next fiscal year. No recommendation may be forwarded to the department of agriculture without the approval of the commission by majority vote. To the extent practicable and consistent with the criteria for qualified applicants set forth in the state plan, the commission shall make recommendations for the expenditure of the total amount of funds appropriated in each fiscal year for qualified youth smoking prevention programs.

(b) An applicant for a grant for a qualified youth smoking prevention program must file an application with the department of agriculture no later than November 1 of the year preceding the fiscal year for which the grant is requested. The department shall forward all applications to the commission for review. The recommendation of the commission shall be binding on the department.

(c) An applicant that requests funding to initiate, continue or expand a youth smoking prevention program shall demonstrate, by means of application, letters of recommendation, and such other means as the commission may designate, that the proposed youth smoking prevention program for which it seeks funds meets the criteria set forth in the state plan. Previous grant recipients shall include recent evaluations of their programs with their applications. The commission may not recommend the award of a grant unless it makes a specific finding, as to each applicant, that the program proposed to be funded meets the criteria set forth in the state plan.

(d) In addition to evaluating the funding request pursuant to the criteria set out in the state plan, the commission shall consider:

(1) In the case of applications to fund media campaigns directed to youth to prevent underage consumption of cigarettes, whether the campaign provides

for sound management and periodic evaluation of the campaign's relevance to the intended audience, including audience awareness of the campaign and recollection of the main message;

(2) In the case of applications to fund school-based education programs to prevent youth smoking, whether there is credible evidence that the program is effective in reducing youth smoking;

(3) In the case of applications to fund community-based youth programs involving youth smoking prevention through general youth development, whether the program:

(A) Has a comprehensive strategy with a clear mission and goals;

(B) Has committed, caring, and professional leadership;

(C) Offers a diverse array of youth-centered activities in youth accessible facilities;

(D) Is culturally sensitive, inclusive and diverse;

(E) Involves youth in the planning, delivery, and evaluation of services that affect them; and

(F) Offers a positive focus and includes all youth.

(4) In the case of applications to fund enforcement and administration of §§ 39-15-407, 39-15-408, 39-15-409, 39-15-410, 39-15-411, 39-15-412, 39-15-413, and title 39, chapter 17, part 15, as well as related retailer education and compliance efforts, whether such activities and efforts can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of eighteen (18).

(e) A department, agency or other instrumentality of state or local government shall be eligible for grants provided pursuant to the provisions of this chapter. The

department of agriculture may be awarded a grant only if it is recommended by a super-majority of at least six (6) of the voting members of the commission.

SECTION 8. On or before May 1 each year, the department of agriculture shall announce the award of grants for the next fiscal year. Any funds appropriated for qualified youth smoking prevention programs not expended in any fiscal year shall be retained in the fund and available for qualified youth smoking prevention programs in any following year.

SECTION 9. (a) As a condition to the receipt of any funds awarded pursuant to the provisions of this chapter, a grantee shall agree to file a report with the department of agriculture within twenty-five (25) days after the end of the fiscal year for which the grant was awarded, as to the following:

- (1) Amount received as a grant and the expenditures made with the proceeds of the grant;

- (2) A description of the program offered and the number of youths who participated in the program; and

- (3) Specific elements of the program meeting the criteria set forth in the state plan.

(b) Any grantee failing to timely file the report required under this section shall be liable for repayment of the full amount of the grant. The attorney general and reporter shall have authority to bring an action for repayment of any grant pursuant to the provisions of this section. The Davidson County chancery court shall have jurisdiction of all actions arising under this section.

(c) The department of agriculture shall review and evaluate the reports of grantees required under this section and shall file a written report with the governor, the speaker of the senate and the speaker of the house of representatives on or before January 31 of each year on the status of the fund and the activities of the fund for the fiscal year most recently ended. The report shall include the beginning and ending

balance of the fund for each fiscal year, payments or gifts received by the fund, income earned and expenditures made, the name of each grantee and the amount of each grant made, the criteria used to award each grant, and whether the program implemented by each grantee met the criteria. The report shall be publicly available immediately upon its filing.

SECTION 10. Tennessee Code Annotated, Section 4-29-223(a), is amended by adding the following language as a new, appropriately designated item:

(_) Youth smoking prevention advisory commission, created by Section 5 of this act.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.